NO. 86-428

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1986

CUDD PRESSURE CONTROL, INC.
AND NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA, INC.

Petitioner

V.

WILLIAM MARTIN KINDLE
AND MURLINE KINDLE

Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether, under the Full Faith and Credit clause of the United States Constitution, Art. IV, §1, a final judgment of Texas awarding death benefits to the estranged spouse of a deceased employee under the Texas Workers' Compensation Act should bar recovery by the parents of the deceased employee for death benefits under a Louisiana workers' compensation statute permitting such recovery only when there are no legal dependants of the deceased employer?

2. Whether *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 US 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941) requires a court, the jurisdiction of which is dependent upon diversity, to apply the conflict of laws principles of the forum state to a proceeding for the recovery of death benefits under the Louisiana Worker's Compensation Act?

LIST OF ALL PARTIES

All parties to this case appear in the caption of the case before the Court. Paulette Kindle is not a party to these proceedings and no longer has an interest in the outcome since her right to seek worker's compensation benefits under Louisiana law has prescribed.

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IN THE
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OCTOBER TERM, 1986

CUDD PRESSURE CONTROL, INC.
AND NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PENNSYLVANIA, INC.
Petitioner

V.

WILLIAM MARTIN KINDLE
AND MURLINE KINDLE
Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

The petitioners, Cudd Pressure Control, Inc. and National Union Fire Insurance Company of Pittsburgh, Pennsylvania, Inc. respectfully pray that a writ of certiorari issue to review the Opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on June 20, 1986.

OPINIONS BELOW

The United States Court of Appeals for the Fifth Circuit rendered an opinion affirming the judgment of the trial Court granting plaintiffs a money judgment in the amount of $40,000.00 (App. A, infra). This opinion has been reported. The judgment itself is App. B, infra.

The Original Opinion of the United States District Court, Western District of Louisisna, Monroe Division App. B, infra) is not reported and was ordered stricken from the record by Order of the Court (App. D, infra) dated May 9, 1985. A Second Opinion of the United States District Court, Western District of Louisiana, Monroe Division (App. D, infra) was rendered on May 9, 1985 and is unreported.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on June 20, 1986. This Court's jurisdiction is invoked under United States Code, Title 28:1254(1).

STATUTORY PROVISIONS INVOLVED

1. United States Code, Title 28:1332

2. Article 8307, Sec. 5 of the Vernon's Annotated Texas Statutes

3. Article 8306, Sec. 8a of the Vernon's Annotated Texas Statutes

4. Louisiana Revised Statutes, Title 23:1231

5. Constitution of the United Stats, Article IV. Section 1:

   Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

6. *Restatement, Second, Conflicts of Laws,* § *2*

> Conflicts of laws is that part of the law of each state which determines what effect is given to the fact that the case may have a significant relationship to more than one state.

7. *Restatement, Second, Conflicts of Laws,* § *9*

> A Court may not apply the local law of its own state to determine a particular issue unless such application of this law would be reasonable in light of the relationship of the State and the other States to the person, thing or occurrence involved.

Due to the length of the statutes designated numbers 1, 2, 3, and 4 above, they have been set forth in Appendix G, infra.

STATEMENT OF THE CASE

William T. Kindle was born on March 11, 1958, in McKinney, Collin County, Texas to William Martin Kindle and Murline Kindle. He was raised in and around McKinney, Texas.

William T. Kindle married Paulette McKenzie Kindle on December 19, 1980, in Canton, Wood County, Texas. At the time of their marriage, William T. Kindle was twenty-two (22) years old and Paulette McKenzie Kindle was thirty-three (33) years old. After the marriage, they established their residence at Van, Texas, living in a mobile home owned by Paulette McKenzie Kindle.

In October of 1982, William T. Kindle abandoned the matrimonial domicile. Although William T. Kindle

obtained, executed and had Paulette McKenzie Kindle execute an in proper person divorce petition, it was never signed by a judge, and, accordingly, William T. Kindle and Paulette McKenzie Kindle were never legally separated nor divorced.

At the time William T. Kindle separated from Paulette McKenzie Kindle, he was unemployed. On November 8, 1982, he became employed by Cudd Pressure Control, Inc., Ambassador Row, Longview, Texas.

At the time of his employment with Cudd Pressure Control, Inc., William T. Kindle lived in the Haystack Apartments, Longview, Texas. He, however, claimed as his permanent residence Route 1, Box 92 or P. O. Box 1021, Van, Texas and as his phone number (214) 963-5393. These are the home phone number and permanent residence address of William M. and Murline Kindle, his parents.

William T. Kindle's first trip to Louisiana, as a part of his job with Cudd, was on March 1, 1983. He was a member of a snubbing crew working on Davis G. #1, Vernon Field, Jackson Parish, Louisiana. William T. Kindle and fellow employees were housed at the Holiday Inn in Ruston, Louisiana during the job.

William T. Kindle was killed at approximately 10:45 a.m. on March 3, 1983 at the above described well site when a nipple blew out releasing a lateral pressure column of gas which hit William T. Kindle with such force, he was thrown 162 feet across the well site location. He was killed instantly.

Paulette McKenzie Kindle, and William T. Kindle were living separate and apart at the time of his death. At no time since William T. Kindle had abandoned Paulette Kindle did he provide her with any actual monetary or material support.

As a result of William T. Kindle's death, his parents, William Martin and Murline Kindle, plaintiffs herein, instituted proceedings before the Texas Industrial Accident Board to determine who was the proper beneficiary for the death benefits provided under Article 8306, Section 8a of Vernon's Annotated Texas Statutes. All interested parties appeared before the Board represented by Counsel. By Order of the Texas Industrial Accident Board, dated August 24, 1983, Paulette McKenzie Kindle was determined to be the proper party beneficiary to receive the death benefits pursuant to the Texas Worker's Compensation Act.

Thereafter, National Union Fire Insurance Company of Pittsburgh, Pennsylvania, the worker's compensation carrier for Cudd Pressure Control, Inc., appealed the decision of the Board to the 294th Judicial District, Van Zandt County, Texas, pursuant to Article 8307, Sec. 5 of Veron's Annotated Texas Statutes. After a full appellate hearing during which all parties were present and represented by counsel, Richard Davis, presiding judge of the 294th Judicial District, Van Zandt County, Texas, signed a final judgment on April 27, 1984, declaring Paulette McKenzie Kindle the sole and exclusive beneficiary of William T. Kindle, and entitled to all benefits provided by law.

On September 7, 1983, the parents filed suit in the United States District Court, Western District of Louisiana, Monroe Division, seeking recovery of death benefits under La. R.S. 23:1231. Jurisdiction was based upon United States Code Title 28:1332. The trial court's award of $20,000.00 to each parent under Louisiana law was ultimately affirmed by the Fifth Circuit.

Paulette McKenzie Kindle is now residing with her mother at Route 4, Box 77, Grande Saline, Texas. Mr. and Mrs. Kindle maintain their home at Route 1, Box 92, Van, Texas.

REASONS FOR GRANTING THE WRIT

By virtue of the decision in the state court proceedings in Texas (awarding benefits to the estranged spouse under Texas state law) and the decision of the Fifth Circuit (awarding benefits to the parents under Louisiana state law), defendants are subjected to a result which is not required by or provided for in *either* state. Under Texas law, the defendants would have been required to pay benefits either to the spouse or to the parents, but not to both. Under Louisiana law, the defendants would have been required to pay benefits either to the spouse (or some other dependent) or to the parents, but not to both.

The result of the Fifth Circuit judgment is that the defendants are paying both claimants, despite the fact that neither statute requires that result. This is hardly a proper result under the Full Faith and Credit Clause. Moreover, such an outcome is not dictated by the decision in *Thomas v. Washington Gas Light Co.*, (1980) 448 US 261, 65 L.Ed.2d 757, 100 S.Ct. 2647, in which the question was one

of a supplementary recovery by the same claimant, not inconsistent with an earlier recovery in another state. To the contrary, this is a result inconsistent with the law of *both* Texas and Louisiana.

The opinions in *Industrial Commission v. McCartin,* (1947) 330 US 622, 91 L.Ed. 1140, 67 S.Ct. 886 and *Thomas, supra,* held that a final worker's compensation award in one state to an injured employee would not bar a supplemental award to the injured employee under the workers' compensation laws of a sister state. Does this exception to the Full Faith and Credit Clause also require the conclusion that a final judgment from one state which declares one of two competing parties the beneficiary for death benefits under its laws is not a bar to a second suit brought by the losing party in a sister state for death benefits under its laws? It is respectfully submitted that *McCartin* and *Thomas,* supra, are not intended to go this far.

Upon the death of William Kindle his estranged spouse, his parents, and the insurance company for the employer litigated the issue of the proper beneficiary for the death benefits under the Texas Worker's Compensation statutes. The Industrial Accident Board rendered a decision in favor of the spouse. The insurer appealed to the 294th Judicial District Court, which affirmed the decision, rejecting the claims of the parents to be declared the beneficiaries, and approving the award to the spouse.

The parents then filed suit in federal court in Louisiana, seeking death benefits under Louisiana Workers' Compersation statutes. Defendants have never denied the right of someone to seek death benefits in Louisiana; see

Thomas, supra, and *Banks v. Carl Poles and Piling, Inc.,* 440 So.2d 803 (La. App. 1st Cir., 1983). However, they have steadfastly denied the right of the parents to seek those benefits, citing the final Texas judgment in favor of the spouse as a bar to their claim for benefits under Louisiana law.

Although the appellate court cited *Thomas, supra,* and its progeny as controlling, it is respectfully submitted that this reliance is misplaced. *McCartin, Thomas and Landry v. Carlson Mooring Services,* 643 F.2d 1080, reh'g en banc denied, 647 F.2d 1121 (5th Cir.), cert. denied, 454 US 1123 (1981) all dealt with an *employee* seeking to obtain *supplemental* workers' compensation benefits under the laws of a sister state after obtaining an award for benefits by judgment under the laws of another state. The *Thomas* court, after "balancing" the interest of the involved states, found that Virginia's interest in the integrity of its tribunal's determinations did not foreclose a second proceeding to obtain a supplemental award in the District of Columbia. Since *Thomas* did not concern a second state's contrary resolution of a fact determined in the first state's proceeding, the employee could have obtained compensation benefits under the laws of either state based on the same set of facts, and the "supplemental award gives full effect to the facts determined by the first award and also allows full credit for payments pursuant to the earlier award. *"There is neither inconsistency nor double recovery."* 448 US 261 at 281.

A court sitting in Louisiana cannot enter a judgment in favor of the plaintiff parents without violating the Full Faith and Credit Clause of the United States Constitution. Such a judgment is blatantly in conflict with the Texas

judgment; the parents are not capable of obtaining an award in Texas and Louisiana; and the employer and insurer do not have a right to a full credit for payments pursuant to the earlier award.

In order for the Texas Industrial Accident Board to find that Paulette Kindle was the proper beneficiary for death benefits under Texas law, a factual determination had to be made, namely that she was a wife who had not, at the time of the injury without good cause and for a period of three (3) years prior thereto, abandoned her husband. The parents were parties to the litigation and had the opportunity to present evidence to defeat the claim of Paulette Kindle.

It has long been held that the determination of a fact by one competent tribunal in a proceding in which the parties to a second proceeding in another state participated, must be given full faith and credit in that second proceeding. *Chicago R.I. & P.R. Co. v. Schendel,* (1926) 270 US 611, 70 L.Ed. 757, 46 S.Ct. 420. The fact that the theories of recovery are incompatible is of no consequence. In *Schendel,* the Iowa proceeding was brought and determined upon the theory that the employee was injured in *intrastate* commerce; the Minnesota action was brought and determined upon the opposite theory that he was injured in *interstate* commerce. Accordingly, the fact that the Texas Worker's Compensation statute does not require a showing of dependency whereas the Louisiana Worker's Compensation statutes do, should not affect the finality of the Texas judgment and its effect as a bar to litigation by the parents in Louisiana for death benefits under the Louisiana Worker's Compensation Act.

The application of *Schendel*, supra, to this matter may give rise to the argument that the parties are thrown into a race to the courthouse situation with the parents being at a disadvantage because they must leave Texas in order to litigate in a favorable forum. It is submitted that the parents should still lose pursuant to the conflicts of laws principles of the forum, Louisiana, which must be applied by a federal court, the jurisdiction of which is based solely upon diversity, pursuant to *Klaxon Co. v. Stentor Electric Mfg. Co.*, (1941) 313 US 487, 61 S.Ct. 1020, 85 L.Ed. 1477, *Ashland Oil, Inc. v. Miller Oil Purchasing Co.*, 678 F.2d 1293 (5th Cir., 1982).

Beginning in 1975, Louisiana adopted the *Restatement, Second, Conflicts of Laws* interest analysis rule in resolving conflicts of laws matters. *Jagers v. Royal Indemnity Co.*, 276 So.2d 309 (La. 1973). The use of the interest analysis principles embodied in the *Restament, Second*, was first utilized by the Court of Appeals for the Fifth Circuit in *Brinkley & West, Inc. v. Foremost Ins. Co.*, 499 F.2d 928 (5th Cir. 1974) and reaffirmed in *Cooper v. American Express Co.*, 593 F.2d 612 (5th Cir. 1979) and *Ashland Oil*, supra.

The trial court and the appellate court breached their duty under *Klaxton* to consider and apply the interest analysis rule to this matter thereby causing a result not contemplated by the worker's compensation laws of either state and resulting in a decision which conflicts with the rationale for allowing "supplemental awards" pursuant to *Thomas v. Washington Gas Light*, supra.

"Conflicts of Laws is that part of the law of each state which determins what effect is given to the fact that

the case may have a significant relationship to more than one state." *Restatement, Second* § 2. "A court may not apply the local law of its own state to determine a *particular issue* unless such application of this law would be reasonable in the light of the relationship of the State and the other States to the person, thing or occurrence involved." *Restatement, Second,* § 9 (emphasis added).

Under the interest analysis choice of law approach applicable in Louisiana, if the application of the law of one interested state would produce a different resolution of a particular issue than would application of the law of another interested state, the Court is bound to separately analyze that issue in order to ascertain which state has the greatest concern in the determination of that issue. *Ashland Oil,* supra.

Appellant would again refer the Court to the Statement of the Case which outlines the contacts of Texas and Louisiana with this case. Upon review, the Court will note that Louisiana has no contact with this case except for the death occurring within its borders and the filing of suit in the United States District Court, Western District of Louisiana, Monroe Division.

As previously stated, the fact of the injury within Louisiana gives it an interest in applying its law to this matter.

> "Few matters could be deemed more appropriately the concern of the state in which the injury occurs...than the bodily safety and economic protection of employees injured within it." *Banks,* supra, at 805.

However, the fact that Louisiana has an interest in providing "economic protection [to] employees injured within it", does not mean that its interests are paramount in determing *who* receives the economic protection.

Separately analyzing the issue as to who is the proper beneficiary, it becomes evident that Texas has the most significant relationship to the issue, and that its law should be applied. Texas was the last domicile of the deceased; it is the current domicile of the parents and Paulette Kindle; it is the state in which the employment contract between Cudd Pressure Control and the deceased was formed; it is the state in which Cudd Pressure Control had its office out of which deceased worked.

Application of Louisiana's law would not further the policy of Louisiana in granting a lump sum award to parents of a deceased when there are no dependents as provided by law. La. R.S. 23:1231 was amended in 1980 to provide:

> "However, if the employee leaves no legal dependents, the sum of twenty thousand dollars shall be paid to each surviving parent of the deceased employee, in a lump sum, which shall constitute the sole and exclusive compensation in such cases."

This amendment came about because Louisiana courts consistently denied any tort recovery to persons who were unable to prove economic dependence on the deceased employee, which failure prevented them from having recovery under the Worker's Compensation Act. The net result was no remedy of the deceased and the employer seemingly escaping any liability for the death of the employee.

Such is not the case here. The employer is paying for the death of William Kindle pursuant to a judgment of the Texas court.

Granting an award to the parents under Louisiana's law will not create certainty and constancy in the law. Instead, it is in direct conflict with *Thomas v. Washington Light*, supra, which recognizes an employee's right to recover the most generous award under the laws of the interested states but not a double award.

CONCLUSION

William and Murline Kindle are not the injured employees the plurality of the *Thomas* Court sought to protect from overbearing employers and claims agents when it approached the overruling of *Magnolia Petroleum Co. v. Hunt*, (1943) 320 US 430, 88 LEd. 149, 64 S.Ct. 208. They knowingly and voluntarily participated in the proceedings in Texas. They cannot now complain of lost rights to benefits under Louisiana law since they did nothing to secure them until the rendition of a judgment against them in Texas. Had they sought relief in Louisiana sooner, the result would not be any different since *Klaxon* commands the application of Louisiana's choice of law rules and in the final analysis Texas would be found to be the state with the greatest interest in applying its law to determine *who* the

proper beneficiary is for death benefits under Louisiana law.

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
APPENDIX A

WILLIAM MARTIN KINDLE and MURLINE KINDLE,
Plaintiffs-Appellees,

v.

CUDD PRESSURE CONTROL, INC., and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA., INC.,
Defendants-Appellants.

No. 85-4398

OPINION

Filed June 20, 1986

Before: Henry A. Politz, Patrick E. Higginbotham, and Edith H. Jones, Circuit Judges.

Opinion by Judge Henry A. Politz

Appeal from the United States District Court
for the Western District of Louisiana
F. A. Little, Jr., District Judge, Presiding

SUMMARY

Workers' Compensation

Appeal from award of workers' compensation benefits. Affirmed.

An oilworker was killed during the course and scope of his employment in an oil-rig accident that occurred in Louisiana. At the time of his death, he was married but separated from his wife. The stipulated facts showed that following their separation the deceased provided no monetary or material support whatsoever to his wife. The deceased had no children and no one was dependent on him for financial support. He used his parents' address in Texas as his permanent address but did not live with them or contribute

towards their support. The Texas Industrial Accident Board considered the workers' compensation claims of the parents and the surviving spouse and determined that the spouse was the proper person to receive death benefits under the Texas Workers' Compensation Act. The parents then brought suit in district court seeking workers' compensation benefits under Louisiana law.

[1] In this diversity action, the court will apply Louisiana law. **[2]** The meaning of the term "legal dependents" must be determined by Louisiana law. **[3]** Under Louisiana law, minor children and a surviving spouse are conclusively presumed to be dependents. No proof of dependency is required and no challenge is allowed. Anyone else claiming dependency must prove the extent and degree of support provided by the decedent. **[4]** Louisiana law provides benefits to legal dependents whether actually and wholly dependent or only partially dependent. **[5]** The purpose of death benefits under Louisiana's workers' compensation scheme is to provide support for dependents deprived of support through the work-caused death of a wage earner. **[6]** Legal dependents in Louisiana are people conclusively presumed dependent and those who can prove actual dependency.

[7] The stipulated facts establish that the surviving spouse was not living with the decedent or dependent on him for any amount of support. Thus, she does not qualify as a legal dependent under either test. Under Louisiana law, if there are no legal dependents, each surviving parent is entitled to receive a lump sum. Here, since no one qualifies as a legal dependent under Louisiana law, each parent is entitled to the lump sum. **[8]** The fact that the payment of benefits to parents is inconsistent with the death benefits traditionally paid under the Louisiana compensation format is not fatal in light of the clear expression of legislative will. **[9]** Despite the "exclusivity" language in the statute, there need be no tort shield, for parents have no justifiable tort claim against the employer for the work-related death of a child. **[10]** Neither does the "exclusivity" language have to be interpreted to prevent double recovery. **[11]** Absent explicit statutory language, this court will not deny the lump sum award to parents on the basis that another has been or might be found to be a legal dependent in another jurisdiction.

[12] Absent unmistakable language in a state compensation act declaring recovery under that act to be a final adjudication of all claims possibly arising from the injury, a subsequent recovery in another jurisdiction is proper. **[13]** Here, this court finds no unmistakable language in the Louisiana statute, or the cases interpreting it, that would require resort to the law of a sister state in this decision. **[14]** The full faith and credit clause requires that the forum state give the factual determination underlying a judgment the same res judicata effect that the rendering state would give. The fact the spouse was awarded benefits in Texas did not include a finding that she was a dependent. Thus, Louisiana was not barred from finding that decedent had no legal dependent.

OPINION

HENRY A. POLITZ, Circuit Judge:

In this diversity case, we must determine the scope and effect of Acts 1980, No. 509, amending La. R.S. 23:1231,[1] a section of the Louisiana Worker's Compensation Law establishing compensation payments for work-related deaths. This is a case of first impression. Considering the express language of the amending Act, in light of the jurisprudential development of the Louisiana worker's com-

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[1]Acts 1980, No. 509, added the second paragraph to La. R.S. § 23:1231, which, as amended, provides:

> For injury causing death within two years after the accident, there shall be paid to the legal dependent of the employee, actually and wholly dependent upon his earnings for support at the time of the accident and death, a weekly sum as hereinafter provided. If the employee leaves legal dependents only partially actually dependent upon his earnings for support at the time of the accident and death, the weekly compensation to be paid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents in the year prior to his death bears to the earnings of the deceased at the time of the accident.
>
> However, if the employee leaves no legal dependents, the sum of twenty thousand dollars shall be paid to each surviving parent of the deceased employee, in a lump sum, which shall constitute the sole and exclusive compensation in such cases.

pensation regime, and considering precedent of the Supreme Court and of this court, we conclude that the district court correctly applied Louisiana law, *Kindle v. Cudd Pressure Control, Inc.*, 608 F.Supp. 544 (W.D.La. 1985), and affirm its decision.

FACTS

This case was tried to the court on comprehensive, stipulated facts. We summarize the relevant portions.

William Martin Kindle and Murline Kindle are the surviving parents of William T. Kindle, who was killed in an oil-rig accident during the course and scope of his employment by Cudd Pressure Control, Inc., an oilfield service company. At the time of his death William T. Kindle was 25 years old. He had married Paulette McKenzie Kindle in December 1980 in Wood County, Texas and they lived together at Van, Texas in a mobile home owned by Paulette Kindle until October of 1982 when he abandoned the matrimonial domicile. There was no reconciliation, and after their separation William T. Kindle provided Paulette Kindle with no monetary or material support whatever. The two were never divorced or legally separated.

William T. Kindle had no children. At the time of his death no one was dependent on him for financial support. Although he used his parents' home in Van, Texas as his permanent address, he did not live with them or contribute to their support.

In November 1982, William T. Kindle was employed by the Longview, Texas office of Cudd Pressure. At that time he resided in an apartment in Longview. On March 1, 1983, Kindle was dispatched to work on a rig in Jackson Parish, Louisiana. He and his fellow workers were lodged in a motel in a nearby city. On March 3, 1983 he was killed in a well blowout.

The Texas Industrial Accident Board considered the workers' compensation claims of the parents and surviving spouse and determined that Paulette Kindle was the proper person to receive death benefits under the Texas Workers' Compensation Act.[2]

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[2]Tex. Rev. Civ. Stat. Ann. art. 8306 § 8a (Vernon Supp. 1986) provides:

The compensation provided for in the foregoing section of this law

National Union Fire Insurance Company, Cudd's compensation carrier, sought judicial review.[3] The Texas state district court upheld the Board's decision.

Invoking diversity jurisdiction, William M. and Murline Kindle brought the present action against Cudd and National Union, seeking the $20,000 lump-sum benefit conditionally granted to each parent by the 1980 amendment to La. R.S. 23:1231. The Kindles claimed entitlement to this payment because their son was survived

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shall be for the sole and exclusive benefit of the surviving husband who has not, for good cause and for a period of three years prior thereto, abandoned his wife at the time of the injury, and of the wife who has not, at the time of the injury without good cause and for a period of three years prior thereto, abandoned her husband, and of the minor children, parents and stepmother, without regard to the question of dependency, dependent grandparents, dependent children, dependent grandchildren and dependent brothers and sisters of the deceased employee; and the amount recovered thereunder shall not be liable for the debts of the deceased nor the debts of the beneficiary or beneficiaries and shall be distributed among the beneficiaries as may be entitled to the same as hereinbefore provided, according to the laws of descent and distribution of this State; provided, the right in such beneficiary or beneficiaries to recover compensation for death be determined by the facts that exist at the date of the death of the deceased and that said right be a complete, absolute and vested one. Any parent who, during a substantial period of the minority of the deceased worker, shall have abandoned the worker shall be deemed to have waived any entitlement to benefits, and such parent's benefits shall be paid as if the parent had predeceased the deceased worker. The burden of proof shall be upon any beneficiary seeking to disqualify the parent on grounds of abandonment or failure to support. Such compensation shall not pass to the estate of the deceased to be administered upon, but shall be paid directly to said beneficiaries when the same are capable of taking, under the laws of this State, or to their guardian in case of mental disability, infancy or other disqualifying cause; except payments may be made directly to the person having custody of the person of such beneficiary, who shall be entitled to receive and receipt for such payments unless or until the association is notified that a guardian has been appointed, in which event payment shall thereafter be made to such guardian. The compensation provided for in this law shall be paid weekly to the beneficiaries herein specified, subject to the provisions of this law.

[3]Tex. Rev. Civ. Stat. Ann. arts. 8307 § 5 and 8306 § 19 (Vernon Supp. 1986).

by no "legal dependents." The district court agreed. Cudd and National Union timely appealed, contending that the trial court erred by giving an unduly restricted interpretation to the term "legal dependents" and by failing to give proper consideration to the Texas proceedings.

ANALYSIS

[1] In this diversity case we are *Erie*-bound to apply Louisiana law as we find or fathom it. It is clear that the Louisiana courts would exercise subject-matter jurisdiction and apply Louisiana law to claims for worker's compensation benefits when the death or injury occurs in Louisiana, no matter where the parties were domiciled, and regardless of the place of the employment contract. *Banks v. Carl Ott Poles and Piling, Inc.*, 440 So.2d 803 (La.App. 1983), *writ denied*, 444 So.2d 1244 (La. 1984); *see generally*, Malone & Johnson, 14 *Louisiana Civil Law Treatise: Workers' Compensation Law and Practice II*, § 404, pp. 313-15 (2d ed. 1980). Although briefed and argued at both the trial and appellate levels, this case does not turn on the choice of law between Texas and Louisiana. Louisiana law determines and controls the resolution of this litigation.

Two issues are posited. Are the Kindles entitled to the lump-sum payment under La. R.S. 23:1231 as parents of an employee not survived by any legal dependents? If that query is answered in the affirmative, would that payment be in derogation of the full faith and credit clause of the United States Constitution?[4]

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[4]Article IV, § 1 of the United States Constitution provides:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be provided, and the Effect thereof.

28 U.S.C. § 1738, the congressional response to this Article, directs:

> The Acts of legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted

[2] The claim of the Kindles turns on the meaning assigned to the term "legal dependents" in Acts 1980, No. 509. Does that term envision a legal dependent determined exclusively under the Louisiana worker's compensation statute, or does it contemplate a legal dependent under the compensation statute of any of the other 49 states whose workers' compensation legislation might be applicable to a given work-related death? We conclude that this decision must be considering only the Louisiana compensation statute. Otherwise the sure, certain, and quick payment, the hallmark of all compensation schemes, would become unsure, uncertain, and anything but quick as the forum state examined into not only what occurred but what might have occurred under the law of all other concerned jurisdictions. Having made this threshold determination, we review the design of Louisiana's worker's compensation death-benefits provisions.

[3] Under La. R.S. 23:1251 children and a surviving spouse living with the decedent are conclusively presumed to be dependents.[5] No proof of dependency is required and no challenge to that depen-

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in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

[5]La. R.S. 23:1251 provides:

The following persons shall be conclusively presumed to be wholly and actually dependent upon the deceased employee:

(1) A surviving spouse upon a deceased spouse with whom he or she is living at the time of the accident or death.

(2) A child under the age of eighteen years (or over eighteen years of age, if physically or mentally incapacitated from earning) upon the parent with whom he is living at the time of the injury of the parent, or until the age of twenty-three if enrolled and attending as a full- time student in any accredited educational institution.

dency is allowed. Anyone else claiming dependency upon the deceased employee must prove the extent and degree of support provided by the decedent.[6] The first category is legally presumed to be dependent. The second, broader category is entirely fact-bound.

[4] Louisiana's first compensation statute, Acts 1914, No. 20, § 8(1)(e), provided for payments to "legal dependents" of the deceased employee, and included both those wholly dependent and those "only partly dependent" on the decedent. Two years later the language was changed and death benefits were made payable to the surviving spouse and children, and then alternatively to the parents, "if dependent," and siblings, "if actually dependent." Acts 1916, No. 243, § 1(f)(11). In 1926, the Louisiana Legislature returned to its original language and established death benefits for "legal dependents" whether "actually and wholly dependent" or "only partially actually dependent." Acts 1926, No. 85, § 8(2). Death benefits have continued to extend to "legal dependents" throughout the intervening 60 years.

[5] There can be no doubt that the purpose of death benefits under the Louisiana worker's compensation scheme is "to provide compensation for dependents deprived of support through the work-caused death of a wage earner." *McDermott v. Funel*, 258 La. 657, ___, 247 So.2d 567, 569 (La. 1971) (Tate, J.). *See* Malone & Johnson, *supra*, § 302, p.6 (death benefits are intended to replace "the loss of needed support which was formerly provided by the deceased worker"). As these scholars appropriately concluded "proof of dependency is essential to recovery." *Id.*

[6] The term "legal dependents," in a worker's compensation death-benefits setting, has been defined by the Louisiana Supreme Court as "dependents who are legally entitled to compensation

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[6]La. R.S. 23:1252 provides:

> In all other cases, the question of legal and actual dependency in whole or in part, shall be determined in accordance with the facts as they may be at the time of the accident and death; in such other cases if there are a sufficient number of persons wholly dependent to take up the maximum compensation, the death benefit shall be divided equally among them, and persons partially dependent, if any, shall receive no part thereof.

under the statute." *Thompson v. Vestal Lumber & Mfg. Co.*, 208 La. 83, ___, 22 So.2d 842, 853 (La. 1945) (on rehearing). That necessarily includes any person who is conclusively presumed to be dependent under § 23:1251 and any other person who can prove actual dependency under § 23:1252. *Thompson; McDermott v. Funel*, 235 So.2d 207 (La.App. 1970), *rev'd on other grounds*, 258 La. 657, 247 So.2d 567 (1971); *Fidelity & Casualty Co. of N.Y. v. Ivory*, 129 So.2d 894 (La.App. 1961) (on rehearing). As relates to a surviving spouse, legal dependency is subject to a significant qualification, for La. R.S. § 23:1255 mandates:

> No compensation shall be payable under [the death-benefits] Part to a surviving spouse unless he or she was living with the deceased spouse at the time of the injury or death, or was then actually dependent upon the deceased spouse for support.

[7] The stipulated facts, in civil litigation the highest form of proof, unequivocally establish that Paulette McKenzie Kindle was not living with the decedent at the time of his death, was receiving no support from him, and was in no way materially or financially dependent upon him. She does not meet either test of legal dependency and she would be foreclosed from receiving any death benefits under Louisiana's compensation statute. These facts are not disputed. No one qualifies under Louisiana law as a legal dependent of William T. Kindle. It necessarily follows that each of his parents is entitled to receive the $20,000 lump-sum payment provided by Acts 1980, No. 509, unless there is a compelling reason to the contrary.

[8] In so concluding, we are cognizant that this payment is inconsistent with the death benefits traditionally paid under the Louisiana compensation format. No dependency, legally presumed or factually proven, is involved. Indeed the absence of such is a prerequisite to the payment. Acts 1980, No. 509, appears to engraft a modest tort-type wrongful-death payment onto the patina of the compensation act. But consistency is not the determinant; the express legislative will is. We are mindful of the first article of the Louisiana Civil Code which instructs: "Law is a solemn expression of legislative will." The legislative will is manifest in the amending act to R.S. 23:1231. If an employee is killed in a situation in which

compensation death benefits would be payable to qualified survivors, but there is no qualifying survivor, *i.e.*, legal dependent, then as a matter of legislative determination and direction, a fixed sum is to be paid to each surviving parent, and that sum "shall constitute the sole and exclusive compensation in such cases."

[9] Does this "exclusivity" language erect a tort shield? Is it a barrier against double liability or double recovery, or is it merely surplusage? We are persuaded it is merely surplusage. There need be no tort shield, for parents have no justiciable tort claim against the employer for the work-related death of a child. R.S. 23:1032; *Miller v. Lambert*, 380 So.2d 695 (La.App. 1980); *Flyyn v. Devore*, 373 So.2d 580 (La.App. 1979); *Branch v. Aetna Cas. & Sur. Co.*, 370 So.2d 1270 (La.App.), *writ denied*, 374 So.2d 660 (La. 1979); *see also, Atchison v. May*, 201 La. 1003, 10 So.2d 785 (1942).

[10] Nor can the language be intended to prevent double liability. There can be no double liability, for the payment to the parents is only triggered if there is no legal dependent to whom payment may be made. Payment to a legal dependent, however small,[7] automatically forecloses the lump-sum payment to the parents. The same applies to double recovery. No one could twice recover. If the parents recover benefits after proving actual dependency, they could not claim the lump-sum payment for, in that instance, a payment would have been made to a legal dependent.

We suspect that the so-called mini-exclusivity clause included in the amendment to R.S. 23:1231 was prompted, in part, by the legislature's concern that a tort-type remedy was being engrafted on the compensation statute. That would account for the verbiage announcing that no new right or remedy was being created, other than the one granting to the non-dependent parents of a deceased child a one-time payment from the employer if no other compensation payments were made under the Louisiana statute.

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[7]One could envision a situation where an employee was survived by a mentally and physically healthy, non-student child who was only weeks away from his 18th birthday when his father was killed. A few weeks of compensation would be paid and all compensation-benefit exposure would then cease. The lump-sum payments to the surviving parents would not be in order. *See also* Malone & Johnson, *supra*, § 307, p.3 (Supp. 1986).

[11] Cudd and National Union urge that we look beyond the parameters of the Louisiana statute and deny the lump-sum payment to the non-dependent parents if we find any person, in any jurisdiction, who has been or might be found to be a legal dependent of William T. Kindle. We decline to do that, absent explicit statutory language or other compelling circumstances that would indicate that the Louisiana Legislature was including recovery under the laws of the sister states when it amended R.S. 23:1231. We find neither. It is probable that little or no consideration was given to the matter. We have no reason to believe that the legislators entertained scenarios beyond the confines of the Louisiana statute. The challenge now made to the resulting uneven fit is a matter best addressed to the creators of this quasi-tort, quasi-compensation remedy to non-dependent parents for the death of a child. This forum is a distant second best.

FULL FAITH AND CREDIT

Appellants maintain that the full faith and credit clause and 28 U.S.C. § 1738 require that we look beyond Louisiana law and give force and effect to the Texas administrative and judicial holdings and thus foreclose the claims of the Kindles. Possessing a surface appeal, their argument loses its persuasive effect upon close scrutiny. Our analysis involves a review of *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980); *Industrial Comm'n of Wisconsin v. McCartin*, 330 U.S. 622 (1947); *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943); and *Landry v. Carlson Mooring Service*, 643 F.2d 1080, *reh'g en banc denied*, 647 F.2d 1121 (5th Cir.), *cert. denied*, 454 U.S. 1123 (1981).

In *Magnolia*, a Louisianian hired in Louisiana was injured on the job in Texas and recovered Texas compensation benefits. The employee then sought supplementary benefits in Louisiana. The Court held that Louisiana could not award supplementary benefits because the doctrines of res judicata and election of remedies applied to workers' compensation cases as they applied to other cases.

Four years later, the *McCartin* court severely limited the *Magnolia* holding and upheld a Wisconsin court's award of supplementary benefits after the employee had recovered under Illinois

law. The employee had been informed by the Wisconsin Industrial Commission that he could first seek benefits under Illinois law and that any recovery thus made would be credited against his claim under Wisconsin law. The Supreme Court distinguished *Magnolia*, holding that

> [o]nly some unmistakable language by a state legislature or judiciary would warrant our accepting . . . a construction [that one state's workers' compensation statute is designed to preclude any recovery by proceedings brought in another state].

330 U.S. at 628.

A unanimous *Thomas* court criticized *McCartin*. A plurality preferred to overrule *Magnolia*, opining that

> a State has no legitimate interest within the context of our federal system in preventing another State from granting a supplemental compensation award when that second State would have had that power to apply its [workers'] compensation law in the first instance.

448 U.S. at 286. Three justices concurred in the result but were unwilling to overrule *Magnolia* or *McCartin* and opt to follow the *McCartin* test which they criticized. 448 U.S. at 289 (White, J., concurring). Justices Marshall and Rehnquist dissented, urging that *Magnolia* be followed and *McCartin* overruled. 448 U.S. at 296 (Rehnquist, J., dissenting).

[12] We have previously confronted the *Thomas* conundrum. In *Landry v. Carlson Mooring Service*, we viewed the Supreme Court's holding in *Thomas* to be " 'that position taken by those Members who concurred in the judgment on the narrowest grounds,' " 643 F.2d at 1085 (*quoting Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976)), and applied the *McCartin* test. Accordingly, in *Landry*, we held that "[a]bsent *unmistakable language*, in either the Texas Compensation Act or the cases construing it, declaring recovery under the Texas act a final adjudication of all claims possibly arising from the injury; *McCartin* requires a finding that a subsequent

recovery under the workers' compensation act of another jurisdiction is proper." 643 F.2d at 1085 (emphasis in original).[8]

A careful parsing in *Landry* of the Texas Act and Texas case law disclosed that neither contained the requisite "unmistakable language" and we allowed a claimant who received benefits under Texas law to seek supplementary benefits under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901 *et seq.*

[13] Although procedurally different, the instant case is conceptually similar to *Landry*. In *Landry* there was a Texas judicial determination that the claimant was entitled to benefits in Texas; here, there is a Texas judicial determination that the claimants were not entitled to benefits in Texas. The Kindles were not able to present their claim for Louisiana benefits in the Texas proceedings, since "Texas courts will not entertain jurisdiction to enforce rights arising under [the Louisiana Workers' Compensation Law]." *Consolidated Underwriters v. King*, 325 S.W.2d 127, 128 (Tex.), *cert. denied and app. dism'd*, 361 U.S. 198 (1959). *Landry* blazes our path. We find no "unmistakable language" in the Louisiana compensation statute, or the case interpreting it, that would require resort to the law of a sister state in this decision.

[14] Finally, Cudd and National Union invite our attention to *Chicago, R. I. & P. R. Co. v. Schendel*, 270 U.S. 611 (1926), and suggest that it directs our decision. We do not agree. *Schendel* simply teaches that the full faith and credit clause requires that the forum state give the factual determination underlying a judgment the same res judicata effect that the rendering state would give. If this rubric were applicable in the instant case, it would avail the appellants naught. Appellants argue that the Texas award to Paulette Kindle was based on a factual finding that she was dependent on the decedent. They would ignore the stipulation that she was not dependent on the decedent and the fact that the award to her under

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[8]Although these full faith and credit cases involve recovery in the first jurisdiction and subsequent attempts in other jurisdictions to recover additional benefits, the principles and policies underlying the full faith and credit clause and res judicata are the same where, as here, the claimants failed to recover in the first jurisdiction.

Tex. Rev. Civ. Stat. Ann. art. 8306 § 8a was not predicated on a finding of presumed or actual dependency. That statute grants death benefits to the surviving spouse provided there is no abandonment of the decedent more than three years prior to his death. And it awards these benefits "without regard to the question of dependency." *Id.* Under the Texas statute, recovery by the spouse is based on status, not dependency. *See, e.g., Commercial Standards Ins. Co. v. Marin,* 488 S.W.2d 861 (Tex.Civ.App. — San Antonio 1972) *writ ref'd n.r.e.* Whereas allowing the spouse automatic recovery might be based on a presumption of dependency, it is not the only conceivable reason. Absent Texas authority requiring that we do so, we cannot ignore the clear language that spousal benefits are due "without regard to the question of dependency." *Schendel* gives appellants little succor.

For the foregoing reasons we conclude that William T. Kindle was not survived by any legal dependent within the intendment of the Louisiana workers' compensation statute, and the fact that his surviving spouse was awarded death benefits under Texas compensation law does not affect the right of the decedent's parents to the lump-sum payment established by Acts 1980, No. 509.

The judgment of the district court is AFFIRMED.

APPENDIX B

United States Court of Appeals
For the Fifth Circuit

No. 85-4398

D.C. Docket No. Ca-83-2122

WILLIAM MARTIN KINDLE and
MURLINE KINDLE,
Plaintiff-Appellees,

versus

CUDD PRESSURE CONTROL, INC.
and NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBUROUGH, PA., INC.
Defendant-Appellants.

Appeal from the United States District Court
for the Western District of Louisiana

Before POLITZ, HIGGINBOTHAM, and JONES, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the District Court in this cause is affirmed.

IT IS FURTHER ORDERED that defendants-appellants pay to plaintiffs-appellees the costs on appeal, to be taxed by the Clerk of this Court.

June 20, 1986

ISSUED AS MANDATE: JULY 14, 1986

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

FILED
APRIL 29, 1985

WILLIAM MARTIN KINDLE, et al.

-vs- CIVIL ACTION NO. 83-2122

CUDD PRESSURE CONTROL, INC.,et al.

OPINION

Plaintiffs, William Martin Kindle and Murline Kindle, are the surviving parents of William T. Kindle, who was killed in an industrial accident on 3 March 1983 in Jackson Parish, Louisiana. On 7 September 1983 they filed the above action in this Court under diversity jurisdiction. On December 14, 1984 the parties agreed to submit a pretrial stipulation as to the facts involved in this case and then submit the entire case for disposition on the record without trial. Briefing was concluded on 4 March 1985. Predicated upon the stipulated facts, the brief and the record as a whole, the Court makes these findings of fact and conclusions of law.

FINDINGS OF FACT

William T. Kindle was born on 11 March 1958 in McKinnery, Collin County, Texas to William Martin Kindle and Murline Kindle. He was raised in and around McKinney, Texas.

William T. Kindle married Paulette McKenzie Kindle on 19 December 1980 in Canton, Wood County, Texas. At the time of their marriage, William T. Kindle was twenty-two years old and Paulette McKenzie Kindle was thirty-three years old. After the marriage, they established their residence at Van, Texas, living in a mobile home owned by Paulette McKenzie Kindle.

In October of 1982, William T. Kindle abandoned the matrimonial domicile. Although William T. Kindle obtained, executed and had Paulette McKenzie Kindle execute an in proper person divorce petition, it was never signed by a judge, and, accordingly, William T. Kindle and Paulette McKenzie Kindle were never legally separated nor divorced.

At the time William T. Kindle separated from Paulette McKenzie Kindle, he was unemployed. On November 8, 1982, he became employed by Cudd Pressure Control, Inc., Ambassador Row, Longview, Texas.

At the time of his employment with Cudd Pressure Control, Inc., William T. Kindle lived in the Haystack Apartments, Longview, Texas. He, however, claimed as his permanent residence Route 1, Box 92 or P. O. Box 1021, Van, Texas and as his phone number (214) 963-5393. These are the home phone number and permanent residence address of William M. and Murline Kindle, his parents.

William T. Kindle's first trip to Louisiana, as a part of his job with Cudd, was on March 1, 1983. He was a member of a snubbing crew working on Davis G. #1, Vernon Field, Jackson Parish, Louisiana. William T. Kindle and fellow employees were housed at the Holiday Inn in Ruston, Louisiana during the job.

William T. Kindle was killed at approximately 10:45 A.M. on 3 March 1983 at the above described well site when a nipple blew out releasing a lateral pressure column of gas which hit William T. Kindle with such force that he was thrown 162 feet across the well site location. He was killed instantly.

Paulette McKenzie Kindle, and William T. Kindle were living separate and apart at the time of his death. At no time since William T. Kindle had abandoned Paulette Kindle did he provide her with any actual monetary or material support.

As a result of William T. Kindle's death, his parents William Martin and Murline Kindle, plaintiffs herein, instituted proceedings before the Texas Industrial Accident Board to determine who was the proper beneficiary for the death benefits provided under Article 8306, Section 8a of the Vernon's Annotated Texas Statutes. All interested parties appeared before the Board represented by Counsel. By Order of the Texas Industrial Accident Board, dated August 24, 1983, Paulette McKenzie Kindle was determined to be the proper party beneficiary to receive the death benefits pursuant to the Texas Worker's Compensation Act.

Thereafter, National Union Fire Insurance Company of Pittsburgh, Pennsylvania, the worker's compensation carrier for Cudd Pressure Control, Inc., appealed the decision of the Board to the 294th Judicial District, Van Zandt County, Texas, pursuant to Article 8307, Sec. 5 of the Veron's Annotated Texas Statutes. After a full appellate hearing during which all parties were present and represented by counsel, Richard Davis, presiding judge of the 294th Judicial District, Van Zandt County, Texas,

signed a final judgment on 27 April 1984 declaring Paulette McKenzie Kindle the sole and exclusive beneficiary of William T. Kindle and entitled to all benefits provided by law.

CONCLUSIONS OF LAW

This Court has jurisdiction pursuant to 28 U.S.C. § 1332. Louisiana law applies. *Erie Railroad Co. v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938).

Because the parties in this matter are residents of Texas, counsel for both sides have devoted a great amount of argument pertaining to conflicts between Louisiana and Texas law. We think counsels' efforts are misplaced.

The jurisprudence is clear that where the accident occurs in Louisiana, the courts of this state may exercise subject matter jurisdiction even through the employment contract is confected outside of Louisiana and the plaintiffs and defendants are non-residents. *Banks v. Carl Ott Poles and Piling, Inc.,* 440 So.2d 803, 804 (La.App. 1st Cir. 1983), *writ denied,* 444 So.2d 1244 (La. 1984). It is also manifest that Louisiana courts uniformly apply Louisiana law to accidents occurring within the state notwithstanding that the contract of employment and the domicile of the employee and the employer are out of state. *Banks, supra;* W. Malone and H. A. Johnson III, 14 *Louisiana Civil Law Treatise: Worker's Compensation Law and Practice,* § 404 at p. 314 (1980).

Under La.R.S. 23:1231, "If the (deceased) employee leaves no legal dependants, the sum of twenty thousand dollars shall be paid to each surviving parent of the

deceased employee, in a lump sum, which shall constitute the sole and exclusive compensation in such cases." Further, "(n)o compensation shall be payable...to a surviving spouse unless he or she was living with the deceased spouse at the time of the injury or death, or was then actually dependent upon the deceased spouse for support". La.R.S. 23:1255. Paulette Kindle meets neither of these requirements. Thus, there being no legal dependent of the deceased, plaintiffs are entitled to recover under La.R.S. 23:1231.

However, under La.R.S. 23:1035.1, the total amount of death benefits paid or awarded under the worker's compensation laws of another state shall be credited against the total amount of death benefits due under the Louisiana act. In pertinent part, La.R.S. 23:1035.1 states:

> "(2) The payment or award of benefits under the worker's comnpensation law of another state, territory, province or foreign nation to an employee or his dependents otherwise entitled on account of such injury or death to the benefits of this Chapter shall not be a bar to a claim for benefits under this act;...
>
> (c) The total amount of death benefits paid or awarded under such other worker's compensation law shall be credited against the total amount of death benefits due under this act."

It is of little matter to the Court that subparagraph (2) above speaks in terms of dependents "otherwise entitled...to the benefits of this Chapter". Clearly the import of this provision is to guard against double recovery. Under sub-subparagraph (c) the language is phrased in terms of

"total" benefits. It is this language that controls the present case and again guards against double recovery.

DECISION

Judgment is rendered in favor of the plaintiffs for $40,000 ($20,00 each), less the amount of death benefits paid or awarded under the worker's compensation law of Texas. Plaintiffs shall submit an appropriate judgment within twenty (20) days of the signed date of this opinion.

DONE AND SIGNED at Alexandria, Louisiana this 29 day of April, 1985.

/s/ F.A. Little, Jr.

F. A. LITTLE, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Filed
MAY 9 1985

WILLIAM MARTIN KINDLE, et al.

-vs- CIVIL ACTION NO. 83-2122

CUDD PRESSURE CONTROL, INC.,
et al.

ORDER

Finding our Opinion on 29 April 1985 in error, it is hereby recalled. The clerk is directed to strike the same from the record and substitute in its place the following new ruling. Upon the signing of this Order, plaintiffs' motion for new trial is moot.

SIGNED at Alexandria, Louisiana this *9* day of May, 1985.

/s/ F.A. Little, Jr.
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Filed
May 9 1985

WILLIAM MARTIN KINDLE, et al.

-vs- CIVIL ACTION NO. 83-2122

CUDD PRESSURE CONTROL, INC., et al.

OPINION

Plaintiffs, William Martin Kindle and Murline Kindle, are the surviving parents of William T. Kindle, who was killed in an industrial accident on 3 March 1983 in Jackson Parish, Louisiana. On 7 September 1983 they filed the above action in this Court under diversity jurisdiction. On 14 December 1984 the parties agreed to submit a pretrial stipulation as to the facts involved in this case and then submit the entire case for disposition on the record without trial. Briefing was concluded on 4 March 1985. Predicated upon the stipulated facts, the briefs and the record as a whole, the Court makes these findings of fact and conclusions of law.

FINDINGS OF FACT

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William T. Kindle married Paulette McKenzie Kindle on 19 December 1980 in Canton, Wood County, Texas. At the time of their marriage, William T. Kindle was twenty-two years old and Paulette McKenzie Kindle was thirty-three years old. After the marriage, they established their residence at Van, Texas living in a mobile home owned by Paulette McKenzie Kindle.

In October of 1982, William T. Kindle abandoned the matrimonial domicile. Although William T. Kindle obtained, executed and had Paulette McKenzie Kindle execute an in proper person divorce petition, it was never signed by a judge, and, accordingly, William T. Kindle and Paulette McKenzie Kindle were never legally separated nor divorced.

At the time William T. Kindle separated from Paulette McKenzie Kindle, he was unemployed. On November 8, 1982, he became employed by Cudd Pressure Control, Inc., Ambassador Row, Longview, Texas.

At the time of his employment with Cudd Pressure Control, Inc., William T. Kindle lived in the Haystack Apartments, Longview, Texas. He, however, claimed as his permanent residence Route 1, Box 92 or P. O. Box 1021, Van, Texas and as his phone number (214) 963-5393. These are the home phone number and permanent residence address of William M. and Murline Kindle, his parents.

William T. Kindle's first trip to Louisiana, as a part of his job with Cudd, was on 1 March 1983, He was a member of a snubbing crew working on Davis G #1, Vernon Field, Jackson Parish, Louisiana. William T. Kindle and fellow employees were housed at the Holiday Inn in Ruston, Louisiana during the job.

William T. Kindle was killed at approximately 10:45 A.M. on 3 March 1983 at the above described well site when a nipple blew out releasing a lateral pressure column of gas which hit William T. Kindle with such force that he was thrown 162 feet across the well site location. He was killed instantly.

Paulette McKenzie Kindle, and William T. Kindle were living separate and apart at the time of his death. At no time since William T. Kindle had abandoned Paulette Kindle did he provide her with any actual monetary or material support.

As a result of William T. Kindle's death, his parents William Martin and Murline Kindle, plaintiffs herein, instituted proceedings before the Texas Industrial Accident Board to determine who was the proper beneficiary for the death benefits provided under Article 8306, Section 8a of the Vernon's Annotated Texas Statutes. All interested parties appeared before the Board represented by Counsel. By Order of the Texas Industrial Accident Board, dated August 24, 1983, Paulette McKenzie Kindle was determined to be the proper party beneficiary to receive the death benefits pursuant to the Texas Worker's Compensation Act.

Thereafter, National Union Fire Insurance Company

of Pittsburgh, Pennsylvania, the worker's compensation carrier for Cudd Pressure Control, Inc., appealed the decision of the Board to the 294th Judicial District, Van Zandt County, Texas, pursuant to Article 8307, Sec. 5 of the Vernon's Annotated Texas Statutes. After a full appellate hearing during which all parties were present and represented by counsel, Richard Davis, presiding judge of the 294th Judicial District, Van Zandt County, Texas, signed a final judgment on April 27, 1984, declaring Paulette McKenzie Kindle the sole and exclusive beneficiary of William T. Kindle, and entitled to all benefits provided by law.

CONCLUSIONS OF LAW

This Court has jurisdiction pursuant to 28 U.S.C. § 1332. Louisiana law applies. *Erie Railroad Co. v. Tompkins,* 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938).

Because the parties in this matter are residents of Texas, counsel for both sides have devoted a great amount of argument pertaining to conflicts between Louisiana and Texas law. We think counsels' efforts are misplaced.

The jurisprudence is clear that where the accident occurs in Louisiana, the courts of this state may exercise subject matter jurisdiction even though the employment contract is confected outside of Louisiana and the plaintiffs and defendants are non-residents. *Banks v. Carl Ott Poles and Piling, Inc.,* 440 So.2d 803, 804 (La.App. 1st Cir. 1983), *writ denied,* 444 So.2d 1244 (La. 1984). It is also manifest that Louisiana courts uniformily apply Louisiana law to accidents occurring within the state notwithstanding that the contract of employment and the domicile of

the employee and the employer are out of state. *Banks, supra;* W. Malone and H. A. Johnson III, 14 *Louisiana Civil Law Treatise: Worker's Compensation Law and Practice,* § 404 at p. 314 (1980) (hereinafter cited as Malone and Johnson).

Under La.R.S. 23:1231, "if the (deceased) employee leaves no legal dependents, the sum of twenty thousand dollars shall be paid to each surviving parent of the deceased employee, in a lump sum, which shall constitute the sole and exclusive compensation in such cases." Further, "(n)o compensation shall be payable...to a surviving spouse unless he or she was living with the deceased spouse at the time of the injury or death, or was then actually dependent upon the deceased spouse for support". La.R.S. 23:1255. Paulette Kindle meets neither of these requirements. Thus, there being no legal dependent of the deceased, plaintiffs are entitled to recover under La.R.S. 23:1231.

It is of little moment that the plaintiffs were denied recovery in Texas. "If Louisiana has sufficient interest in the affair to permit its courts to entertain jurisdiction over the subject matter, then it has sufficient interest to see that the tenets of its compensation act are carried out." *Malone and Johnson,* § 409 at p. 333. A prior denial of compensation is no different from a prior award in this context and should not bar a second suit. *Id.* (and cases cited therein).

DECISION

Judgment is rendered in favor of the plaintiffs for $40,000 ($20,000 each), plus interest and costs. Plaintiffs shall submit an appropriate judgment within twenty (20) days of the signed date of this opinion.

DONE AND SIGNED at Alexandria, Louisiana this 9 day of May, 1985.

/s/F. A. Little, Jr.

F. A. LITTLE, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MOPNROE DIVISION

FILED
MAY15 1985

RECEIVED
May 15 1985

WILLIAM MARTIN KINDLE, ET AL

VERSUS CIVIL ACTION NO. 83-2122

CUDD PRESSURE CONTROL, INC., ET AL

JUDGMENT

THIS CAUSE having come before the Court, with evidence being submitted and argued, and for the reasons set forth in that opinion of this Court dated May 9, 1985;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there be judgment herein against the defendants, CUDD PRESSURE CONTROL, INC. and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA, in solido, in the full sum of TWENTY THOUSAND DOLLARS ($20,000.00), each, together with interest from date of judicial demand until paid and all costs of there proceedings as allowed by law.

THUS RENDERED the 9th day of May, 1985; READ AND SIGNED this *15* day of May, 1985.

Judgment entered 5-16-85

/s/ F. A. Little, Jr.

F. A. LITTLE, JR.
UNITED STATES DISTRICT JUDGE

ATTEST A TRUE COPY:
MAY 16, 1985
By: Sandria Dean

Deputy Clerk

APPENDIX G

STATUTORY PROVISIONS INVOLVED

1. United States Code, Title 28:1332. Diversity of citizenship; amount in controversy; costs;

(a) The District Courts shall have original jurisdiction in all civil actions where the matter in controversy exceeds the sum or value of $10,000.00, exclusive of interest and costs, and is between:

(1) citizens of different States;

(2) citizens of a State and citizens or a subject of a foreign state;

(3) citizens of different states and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or different States.

(b) Except when express provisions therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counter-claim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs,

the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business: Provided further, That in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico. June 25, 1948, c.646, 62 Stat. 930; July 26, 1956, c. 740, 70 Stat. 658, July 25, 1958, Pub.L. 85-554, §2, 72 Stat. 415; Aug. 14, 1964, Pub.L. 88-439, §1, 78 Stat. 445.

2. VERNON'S ANNOTATED TEXAS STATUTES

Article 8307, Section 5, Determination of questions; suit to set aside final ruling and decision; revocation of association's license.

Section 5. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except as otherwise provided, be determined by the Board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said Board shall, within twenty (20) days after the rendition of said final ruling and decision by said Board, file with said Board notice that he will not abide by said final ruling and decision. And he shall within twenty (20) days after giving such notice bring suit in the county where the injury occurred, or in the county where the employee resided at the time the injury occurred (or, if such employee is deceased, then in the county where the employee resided at the time of his death), to set aside said final ruling and decision, and said Board shall proceed no further toward the adjustment of such claim, other than hereinafter provided. In all cases of occupational diseases, for the purpose of determing venue when an appeal is effected to set aside the final ruling and decision of the Board, suit shall be brought in a court of competent jurisdiction in the said county in which the employee was last exposed to the disease alleged, prior to the manifestation of the disease, or death therefrom, or in the county in which the adverse party resides, or has a permanent place of business, or by agreement of the parties in a court of competent jurisdiction in any county in this state. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law, and the suit of the injured employee or person suing on account of the death of such employee shall be against the Association, if the employer of such injured or deceased employee at the

time of such injury or death was a subscriber as defined in this law. If the final order of the Board is against the Association, then the Association and not the employer shall bring suit to set aside said final ruling and decision of the Board, if it so desires, and the court shall in either event determine the issues in such cause, instead of the Board, upon trial de novo, and the burden of proof shall be upon the party claiming compensation. The Industrial Accident Board shall furnish any interested party in said claim pending in court, upon request, free of charge, with a certified copy of the notice of the employer becoming a subscriber, filed with the Board, and the same when properly certified to shall be admissible in evidence in any court in this state upon trial of such claim therein pending, and shall be prima facie proof of all facts stated in such notice in the trial of said cause unless same is denied under oath by the opposing party therein. In case of recovery, the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to such final ruling and decision of the Board, after having given notice as above provided, fails within said twenty (20) days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto; and, if the same is against the Association, it shall at once comply with such final ruling and decision; and failing to do so, the Board shall certify the fact to the Commissioner of Insurance, and such certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such Association to do business in Texas.

Notwithstanding any other provision of this law, as amended, no award of the Board, and no judgment of the court, having jurisdiction of a claim against the association for the costs or expense of items of medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances furnished to an employee under circumstances creating a liability therefor on the part of the association under the provisions of this law, shall include in such award or judgment any cost or expense of any items not actually furnished to and received by the employee prior to the date of said award or judgment. The first such award or judgment rendered on such claim shall be res judicata of the liability of the association for all such cost or expense which could have been claimed up to the date of said award or judgment and of the issue that the injury of said employee is subject to the provisions of this law with respect to such items, but shall not be res judicata of the obligation of the association to furnish or pay for any such items after the date of said award or judgment. After the first such final award or judgment, the Board shall have continuing jurisdiction in the same case to render successive awards to determine the liability of the association for the cost or expense of any such items actually furnished to and received by said employee not more than six (6) months prior to the date of each such successive award, until the association shall have fully discharged its obligation under this law to furnish all such medical aid, hospital services, nursing, chiropractic services, medicines or prosthetic appliances to which said employee may be entitled; provided, each such successive award of the Board shall be subject to a suit to set aside said award in a court

of competent jurisdiction, in the same manner as provided in the case of other awards under this law.

3. Article 8306, Section 8a. Persons to whom death benefits payable; exemptions; distribution; payments.

Section 8a. The compensation provided for in the foregoing section of this law shall be the sole and exclusive benefit of the surviving husband who has not, for good cause and for a period of three years prior thereto, abandoned his wife at the time of the injury, and of the wife who has not, at the time of the injury without good cause and for a period of three years prior thereto, abandoned her husband, and of the minor children, parents and stepmother, without regard to the question of dependency, dependent grandparents, dependent children, dependent grandchildren and dependent brothers and sisters of the deceased employee; and the amount recovered thereunder shall not be liable for the debts of the deceased nor the debts of the beneficiary or beneficiaries and shall be distributed among the beneficiaries as may be entitled to the same as herein before provided, according to the laws of descent and distribution of this State; provided, the right in such beneficiary or beneficiaries to recover compensation for death be determined by the facts that exist at the date of the death of the deceased and that said right be a complete, absolute and vested one. Any parent who, during a substantial period of the minority of the deceased worker, shall have abandoned the worker shall be deemed to have waived any entitlement to benefits and such parent's benefits shall be paid as if the parent had predeceased the deceased worker. The burden of proof shall be upon any beneficiary seeking

to disqualify the parent on the grounds of abandonment or failure to support. Such compensation shall not pass to the estate of the deceased to be administered upon, but shall be paid directly to said beneficiaries when the same are capable of taking, under the laws of this State, or to their guardian in case of mental disability, infancy or other disqualifying cause; except payments may be made directly to the person having custody of the person of such beneficiary, who shall be entitled to receive and receipt for such payments unless or until the association is notified that a guardian has been appointed, in which event payment shall thereafter be made to such guardian. The compensation provided for in this law shall be paid weekly to the beneficiaries herein specified, subject to the provisions of this law.

4. La. R.S. 23:1231 Death of employee; payment of dependents; surviving parents.

For injury causing death within two years after the accidnet, there shall be paid to the legal dependent of the employee, actually and wholly dependent upon his earnings for support at the time of the accident and death, a weekly sum as hereinafter provided. If the employee leaves legal dependents only partially actually dependent upon his earning for support at the time of the accident and death, the weekly compensation to be paid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents in the year prior to his death bears to the earnings of the deceased at the time of the accident.

However, if the employee leaves no legal dependents, the sum of twenty thousand dollars shall be paid to each surviving parent of the deceased employee, in a lump sum, which shall constitute the sole and exclusive compensation in such cases.

Amended by Acts 1969, Ex.Sess., No. 25, §6; Acts 1975, No. 583, ¶10, eff. Sept. 1, 1975; Acts 1980, No. 509, §1.